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14

15 **UNITED STATES DISTRICT COURT**
16 **NORTHERN DISTRICT OF CALIFORNIA**
17

18 **MERCEDES HERRERA,**

19 **Plaintiff,**

20 **v.**

21 **LCS FINANCIAL SERVICES**
22 **CORPORATION and OCWEN LOAN**
23 **SERVICING LLC,**

24 **Defendants.**

) **Case No. 09-cv-02843 TEH**
)
) **DISCOVERY MATTER**
)
) **PLAINTIFF'S NOTICE OF MOTION**
) **AND MOTION TO COMPEL FURTHER**
) **DISCOVERY RESPONSES BY**
) **DEFENDANT OCWEN LOAN**
) **SERVICING, LLC; DECLARATION OF**
) **CHRISTOPHER BRANCART;**
) **EXHIBITS**
)
) **Hearing**
) **Date: August 4, 2010**
) **Time: 9:30 am.**
) **Room: JL**

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27 ///

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1 **I. NOTICE OF MOTION**

2 On August 4, 2010, at 9:30 am, plaintiff Mercedes Herrera will move Hon. James
 3 Larson, United States Magistrate Judge for the Northern District of California, for issuance of an
 4 order compelling defendant Ocwen Loan Servicing, LLC to provide further responses to
 5 plaintiff's interrogatories 1, 2, 7, 9 and 10, and document requests 5, 6, 13, and 14. This motion
 6 is brought under Rules 26, 33, 34, and 37 of the Federal Rules of Civil Procedure and Local Rule
 7 37. It is based upon this notice, the attached memorandum, declaration and exhibits. There is
 8 good cause to grant this motion because it seeks to compel discovery that is relevant and not
 9 privileged.

10 **II. CONFERENCE OF COUNSEL**

11 Pursuant to federal and local rules 37, counsel conferred via telephone (Ocwen's counsel
 12 is located in Orange County) on three occasions – April 19, and May 3 and 10, 2010. They also
 13 exchanged several letters in an effort to avoid or limit the need for this motion. (Declaration of
 14 Christopher Brancart ["Brancart Dec."], ¶ 6.)

15 **III. MEMORANDUM OF POINTS AND AUTHORITIES**

16 **A. Summary of Ms. Herrera's Case against Ocwen**

17 In 2005, Mercedes Herrera obtained two mortgages to purchase a home. When
 18 Herrera's adjustable interest rate increased, she fell behind on her payments, and the first
 19 mortgage holder recorded a notice of default on the first mortgage. On June 19, 2008, Herrera
 20 lost her home to foreclosure by the first mortgage holder. (Order, pp.1 - 2; doc. 33;
 21 [summarizing the first amended complaint.]

22 Herrera's second mortgage was serviced by Ocwen. It was subject to California's anti-
 23 deficiency statute, Code of Civil Procedure § 580b. That statute prohibits a lender "from
 24 obtaining a deficiency judgment against a purchaser in a purchase money secured land
 25 transaction." Under § 580b, the lender must look solely to the security itself, i.e., the land, and
 26 no personal judgment may be recovered. Ocwen does not dispute that § 580b applies to
 27 Herrera's second mortgage. (Order, p. 5; doc. 33.)

28 Ocwen possessed information showing that Herrera's second mortgage was subject to §

1 580b; nonetheless, it sent collection letters to Ms. Herrera that disregarded the provisions of §
 2 580b. For example, Ocwen had known of the foreclosure on Ms. Herrera's first mortgage for
 3 five months when it sent Ms. Herrera a letter threatening to foreclose on her second loan. Ms.
 4 Herrera alleges that letter and others sent by Ocwen violated California's Rosenthal Fair Debt
 5 Collections Practices Act, which prohibits, among other things, threats to take action that cannot
 6 legally be taken, like Ocwen's threat to foreclose on Ms. Herrera's second loan. Ocwen later
 7 transferred Ms. Herrera's second mortgage to another servicer, codefendant LCS. Ms. Herrera
 8 alleges that LCS's collection efforts were also misleading, false and deceptive.

9 Ms. Herrera brings this case as a class action, seeking to represent two classes. The first
 10 consists of California residents meeting the following conditions: (1) person who obtained a loan
 11 subject to Section 580b; (2) the real property that secured the loan was sold in foreclosure; and
 12 (3) LCS tried to collect on that loan after the foreclosure in a manner that violated the FDCPA.¹
 13 The second class consists of California residents meeting the following conditions: (1) person
 14 who obtained a loan subject to Section 580; (2) the real property that secured the loan was sold
 15 in foreclosure; and (3) Ocwen tried to collect on that loan after the foreclosure in a manner that
 16 violated the FDCPA and therefore the Rosenthal Act. (First amended class action complaint,
 17 doc. 16, pp. 6-7.)

18 **B. Summary of the Motion**

19 By this motion, plaintiff Mercedes Herrera seeks an order compelling Ocwen to:

- 20 ● Identify potential class members (Interrogatories 1, 2);
- 21 ● Provide several categories of information about the potential class members
 22 (Interrogatories 1 - 7);
- 23 ● Identify employees who worked on its § 580b compliance procedures
 24 (Interrogatory 9), and who have knowledge of Ocwen's affirmative defenses

25
 26 ¹ Ms. Herrera sues LCS under the Federal Fair Debt Collections Practices Act (FDCPA)
 27 and Ocwen under the FDCPA's California analog, the Rosenthal Act. The acts define the term
 28 "debt collector" differently such that LCS falls within the federal law, while Ocwen is only
 covered by the state statute.

(Interrogatory 10);

- Provide documents related to Ms. Herrera and her loan, which was transferred between Ocwen and codefendant LCS (Request 5), and copies of whatever agreements govern the relationship between Ocwen and LCS (Request 6); and,
- Provide all documents in its possession that are or relate to correspondence related to § 580b from debtors (Request 13) and other persons (Request 14).²

C. Arguments

This section sets out Ms. Herrera's discovery requests and Ocwen's answers, explains Ms. Herrera's need for the discovery at issue, and argues that Ocwen's objections should be rejected and the discovery ordered.

1. **Interrogatories 1 through 7 seek relevant information regarding § 580b covered loans, class members, and Ocwen's affirmative defenses.**

Interrogatories 1 through 7 seek discovery regarding § 580b covered loans serviced or transferred to other debt collectors by Ocwen and the identity of potential class members.

Interrogatory 1: For each purchase money mortgage loan that you have attempted, since June 25, 2008, to collect on after the property securing the loan was foreclosed upon, please identify (a) the name of the borrower, (b) the loan number or other identifying number, (c) the current repayment status, (d) the payment history, (e) the date of foreclosure, and (f) the amount of money you collected, if any, after foreclosure.

Ocwen's Answer: Ocwen objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege and/or attorney work product doctrine. Ocwen further objects to this interrogatory on the grounds that it is vague and ambiguous, particularly with respect to the undefined phrase "collect on." Ocwen further objects to this interrogatory on the grounds that it is compound. Ocwen objects to this interrogatory on the grounds that it seeks confidential personal information about other Ocwen borrowers in violation of applicable federal and state privacy laws, including but not limited to the Gramm-Leach-Bliley Act, 15 U.S.C. § 6802, et seq. Ocwen further objects on the grounds that this interrogatory is overbroad and burdensome for numerous reasons, including but not limited to seeking the payment histories of the loans of numerous other individuals. Ocwen further objects on the grounds that this interrogatory seeks information that is irrelevant to the subject matter of this litigation, including but not limited to the loan payment histories of absent individuals and other information about their loans that has no bearing on plaintiff's claims or on the issue of class

² This discovery and Ocwen's responses are exhibits 1 - 6 to the declaration of Christopher Brancart [Brancart Dec.] ¶ 3.) All exhibits to this motion are attached to the declaration of Christopher Brancart. The exhibits are identified and authenticated in ¶ 3 of the declaration.

1 certification.

2 Subject to and without waiving the foregoing General and Specific Objections, Ocwen
 3 states: Ocwen does not possess the information sufficient to permit it to respond to this
 4 interrogatory. In particular, because plaintiff has defined "Purchase Money Mortgage" to
 5 include any loan "subject to California Code of Civil Procedure § 580b," Ocwen is
 6 unable to ascertain which loans meet this description. Specifically, Ocwen does not
 7 originate loans and did not originate plaintiff's loan. Ocwen acquires servicing rights to
 8 mortgage loans, in some cases directly from the originator, but in many cases from an
 assignee other than the originator. In connection with this process, Ocwen is not
 provided with information regarding whether the loan at issue is a purchase money
 mortgage or a refinancing transaction. Accordingly, Ocwen does not possess information
 sufficient to permit it to determine which loans, if any, meet the criteria described by
 plaintiff in this interrogatory.

9 By this interrogatory, Ms. Herrera seeks to identify which loans Ocwen tried to collect on
 10 during the class period that fit the class definition. It seeks the borrower's name, loan number,
 11 repayment status, payment history, date of foreclosure, and the amount of money Ocwen
 12 collected following the foreclosure on the first mortgage, the triggering event for § 580b
 13 coverage. Ocwen appears to have this information. For example, Ocwen produced a print-out
 14 for Ms. Herrera's loan (Brancart Dec., Exhibit 12) that contains the information sought by
 15 interrogatories 1 through 7.

16 This information is not only available but also relevant. It is needed to identify class
 17 members, to determine the size of the class, and to determine damages. For the class, money
 18 collected by Ocwen from loans covered by § 580b is recoverable under the Rosenthal Act as
 19 actual damages under § 1788.30(a) of the Rosenthal Act. For Herrera, her damages depend in
 20 part on the number and frequency of Ocwen's unlawful debt collection practices. Cal. Civ. Code
 21 § 1788.30(b).

22 **Interrogatory 2:** For each purchase money mortgage loan that, since June 25, 2008, you
 23 assigned, sold, or transferred to a third party debt collector (including defendant LCS)
 24 after the property securing the loan was foreclosed upon, please identify (a) the borrower,
 25 (b) the loan number or other identifying number, (c) the date of sale, assign, or transfer,
 26 (d) the third party debt collector, (e) the date of foreclosure, (f) whether you notified the
 third party debt collector that § 580b applied to the loan, (g) if so, the date you notified
 the third party debt collector, and (h) the amount of money you have received in
 connection with each loan, if any, from the third party debt collector since the loan was
 assigned, sold, or transferred.

27 **Ocwen's Answer:** Ocwen objects to this interrogatory to the extent it seeks information
 28 protected by the attorney-client privilege and/or attorney work product doctrine. Ocwen
 further objects to this interrogatory on the grounds that it is vague and ambiguous,

1 particularly with respect to the undefined phrase "collect on." Ocwen further objects to
 2 this interrogatory on the grounds that it is compound. Ocwen objects to this interrogatory
 3 on the grounds that it seeks confidential personal information about other Ocwen
 4 borrowers in violation of applicable federal and state privacy laws, including but not
 5 limited to the Gramm-Leach-Bliley Act, 15 U.S.C. § 6802, et seq. Ocwen further objects
 6 on the grounds that this interrogatory is overbroad and burdensome for numerous
 7 reasons, including but not limited to seeking the payment histories of the loans of
 8 numerous other individuals. Ocwen further objects on the grounds that this interrogatory
 9 seeks information that is irrelevant to the subject matter of this litigation, including but
 10 not limited to the loan payment histories of absent individuals and other information
 11 about their loans that has no bearing on plaintiff's claims or on the issue of class
 12 certification.

13 Subject to and without waiving the foregoing General and Specific Objections, Ocwen
 14 states: Ocwen does not possess the information sufficient to permit it to respond to this
 15 interrogatory. In particular, because plaintiff has defined "Purchase Money Mortgage" to
 16 include any loan "subject to California Code of Civil Procedure § 580b," Ocwen is
 17 unable to ascertain which loans meet this description. Specifically, Ocwen does not
 18 originate loans and did not originate plaintiff's loan. Ocwen acquires servicing rights to
 19 mortgage loans, in some cases directly from the originator, but in many cases from an
 20 assignee other than the originator. In connection with this process, Ocwen is not
 21 provided with information regarding whether the loan at issue is a purchase money
 22 mortgage or a refinancing transaction. Accordingly, Ocwen does not possess information
 23 sufficient to permit it to determine which loans, if any, meet the criteria described by
 24 plaintiff in this interrogatory.

25 This interrogatory seeks information similar to that sought by interrogatory number 1,
 26 and for the same reasons. It asks Ocwen to identify each loan subject to § 580b that it
 27 transferred or assigned to another debt collector, like codefendant LCS. For each loan, it asks if
 28 and when Ocwen gave notice of § 580b to other debt collectors, and how much money Ocwen
 received from collections after the transfer. This information will identify members of both
 classes Ms. Herrera seeks to represent. It is also relevant in determining whether Ocwen
 engaged in unlawful debt collection practices. If Ocwen gave other debt collectors, but not
 debtors, notice of § 580b, then an inference may be drawn that Ocwen knew about the
 application of § 580b, but withheld that information from debtors. This inference rebuts
 Ocwen's bona fide error defense, discussed below.

This information is also relevant to Ms. Herrera's damages and class damages. The
 California Fair Debt Collection Practices Act, under which Ms. Herrera sues Ocwen, has
 incorporated the class action remedies available under the federal Fair Debt Collection Practices
 Act. *Gonzales v. Arrow Financial Services, LLC*, 233 F.R.D. 577, 580 (S.D.Cal. 2006). The

remedies available in a class action under the federal Fair Debt Collection Practices Act are set out at 15 U.S.C. §1692k(a), and include a civil penalty capped at the lesser of \$500,000 or 1% of the net worth of the defendant. In determining the amount of civil penalty to award, the court is to consider the factors set out at 15 U.S.C. §1692k(b)(2), including "the frequency and persistence of noncompliance by the debt collector, the nature of such noncompliance, the resources of the debt collector, the number of persons adversely affected, and the extent to which the debt collector's noncompliance was intentional."

Interrogatory 3: For each loan identified in response to interrogatories 1 and 2, please state when and how you became aware that the property securing the loan had been foreclosed on.

Ocwen's Answer: Ocwen objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege and/or attorney work product doctrine. Ocwen further objects to this interrogatory on the grounds that it is vague and ambiguous. Ocwen objects to this interrogatory on the grounds that it seeks confidential personal information about other Ocwen borrowers in violation of applicable federal and state privacy laws, including but not limited to the Gramm-Leach-Bliley Act, 15 U.S.C. § 6802, et seq. Ocwen further objects on the grounds that this interrogatory is overbroad and burdensome. Ocwen further objects on the grounds that this interrogatory seeks information that is irrelevant to the subject matter of this litigation.

Subject to and without waiving the foregoing General and Specific Objections. Ocwen states: For the same reasons Ocwen cannot identify loans in response to interrogatory Nos. 1 and 2 (its responses to which are incorporated herein by reference), Ocwen cannot provide the information sought by this interrogatory.

This interrogatory seeks more information about each of the loans identified in response to interrogatory numbers 1 and 2; specifically, how and when Ocwen became aware that a property securing a second mortgage had been foreclosed by the first mortgage holder, a triggering event for §580b coverage. This information is also relevant to Ocwen's twelfth affirmative defenses (answer, Doc. 34; p. 7), the so-called bona fide error defense, which provides a partial defense where a debt collector can show that a violation was unintentional and occurred notwithstanding procedures "reasonably adapted" to prevent the violation. Foreclosure information is necessary to determine if a loan is subject to § 580b. Whether, how and when Ocwen learns of foreclosures is relevant to whether its procedures are "reasonably adapted" to § 580b.

Interrogatory 4: For each loan identified in response to interrogatories 1 and 2, please

1 identify by case or other number, date of filing, and type (i.e. civil complaint, notice of
 2 lien, acceleration, notice of default) all legal process initiated by you after the date the
 property securing the loan was foreclosed upon.

3 **Ocwen's Answer:** Ocwen objects to this interrogatory to the extent it seeks information
 4 protected by the attorney-client privilege and/or work product doctrine. Ocwen further
 5 objects to this interrogatory on the grounds that it is vague and ambiguous, particularly
 6 with respect the undefined phrase "legal process." Ocwen objects to this interrogatory to
 7 the extent it seeks information protected by the attorney-client privilege and/or attorney
 8 work product doctrine. Ocwen further objects to this interrogatory on the grounds that it
 9 is vague and ambiguous. Ocwen objects to this interrogatory on the grounds that it seeks
 10 confidential personal information about other Ocwen borrowers in violation of applicable
 11 federal and state privacy laws, including but not limited to the Gramm-Leach-Bliley Act,
 12 15 U.S.C. § 6802, et seq. Ocwen further objects on the grounds that this interrogatory is
 13 overbroad and burdensome. Ocwen further objects on the grounds that this interrogatory
 14 seeks information that is irrelevant to the subject matter of this litigation. Subject to and
 15 without waiving the foregoing General and Specific Objections. Ocwen states: For the
 16 same reasons Ocwen cannot identify loans in response to interrogatory Nos. 1 and 2 (its
 17 responses to which are incorporated herein by reference), Ocwen cannot provide the
 18 information sought by this interrogatory.

19 This Interrogatory seeks to identify any legal process initiated by Ocwen to collect on
 20 loans identified in response to interrogatories 1 and 2. This information is needed to rebut
 21 Ocwen's bona fide error defense. If, for example, Ocwen often took steps to initiate collection
 22 actions following foreclosures on second mortgages after foreclosure by the first mortgage
 23 holder, then its procedures were not "reasonably adapted" to the requirements of § 580b.

24 **Interrogatory No. 5:** For each loan identified in response to interrogatory 1, please
 25 describe how your efforts to collect on that loan changed following the foreclosure on the
 26 property securing the loan.

27 **Ocwen's Answer:** Ocwen objects to this interrogatory to the extent it seeks information
 28 protected by the attorney-client privilege and/or attorney work product doctrine. Ocwen
 further objects to this interrogatory on the grounds that it is vague and ambiguous,
 particularly with respect to its use of the phrase "collect on." Ocwen objects to this
 interrogatory on the grounds that it seeks confidential personal information about other
 Ocwen borrowers in violation of applicable federal and state privacy laws, including but
 not limited to the Gramm-Leach-Bliley Act, 15 U.S.C. § 6802, et seq. Ocwen further
 objects on the grounds that this interrogatory is overbroad and burdensome. Ocwen
 further objects on the grounds that this interrogatory seeks information that is irrelevant
 to the subject matter of this litigation.

Subject to and without waiving the foregoing General and Specific Objections. Ocwen
 states: For the same reasons Ocwen cannot identify loans in response to interrogatory
 Nos. 1 and 2 (its responses to which are incorporated herein by reference), Ocwen cannot
 provide the information sought by this interrogatory.

This interrogatory asks Ocwen to describe how Ocwen's collection efforts changed after

1 it learned a loan had become subject to § 580b. This information helps rebut Ocwen's bona fide
2 error defense. If Ocwen made no changes, then its defense likely fails.

3 **Interrogatory 6:** For each loan identified in response to interrogatory 1, please describe
4 each method used by you to attempt to collect on the loan after the property securing the
loan was foreclosed on.

5 **Ocwen's Answer:** Ocwen objects to this interrogatory to the extent it seeks information
6 protected by the attorney-client privilege and/or attorney work product doctrine. Ocwen
7 further objects to this interrogatory on the grounds that it is vague and ambiguous,
particularly with respect to its use of the phrase "collect on." Ocwen objects to this
8 interrogatory on the grounds that it seeks confidential personal information about other
Ocwen borrowers in violation of applicable federal and state privacy laws, including but
9 not limited to the Gramm-Leach-Bliley Act, 15 U.S.C. § 6802, et seq. Ocwen further
objects on the grounds that this interrogatory is overbroad and burdensome. Ocwen
further objects on the grounds that this interrogatory seeks information that is irrelevant
to the subject matter of this litigation.

10 Subject to and without waiving the foregoing General and Specific Objections. Ocwen
11 states: For the same reasons Ocwen cannot identify loans in response to interrogatory
12 Nos. 1 and 2 (its responses to which are incorporated herein by reference), Ocwen cannot
provide the information sought by this interrogatory.

13 This interrogatory is similar to interrogatory 5. It asks Ocwen to describe its post-
14 foreclosure collection methods, which include the letters it sends to borrowers. If the log Ocwen
15 produced for Ms. Herrera's loan is typical, then Ocwen's logs identify which form letters are
16 sent to the borrower and when. (Brancart Dec., Exhibit 12.) Whether the letters contain
17 language that is deceptive or misleading will determine Ocwen's liability.

18 **Interrogatory 7:** For each loan identified in response to interrogatories 1 and 2,
19 please state whether you contend that the borrower on the loan received any notice from
you that no deficiency judgment could be obtained with respect to the loan.

20 **Ocwen's Answer:** Ocwen objects to this interrogatory to the extent it seeks information
21 protected by the attorney-client privilege and/or attorney work product doctrine. Ocwen
22 further objects to this interrogatory on the grounds that it seeks confidential personal
information about other Ocwen borrowers in violation of applicable federal and state
23 privacy laws, including but not limited to the Gramm-Leach-Bliley Act, 15 U.S.C. §
6802, et seq. Ocwen further objects on the grounds that this interrogatory is overbroad
and burdensome. Ocwen further objects on the grounds that this interrogatory seeks
24 information that is irrelevant to the subject matter of this litigation. Ocwen further
objects to this interrogatory to the extent it suggest (sic) that Ocwen was required to
25 notify any particular borrower that it could not obtain a deficiency judgment against that
borrower with respect to a particular loan.

26 Subject to and without waiving the foregoing General and Specific Objections. Ocwen
27 states: For the same reasons Ocwen cannot identify loans in response to interrogatory
28 Nos. 1 and 2 (its responses to which are incorporated herein by reference), Ocwen cannot
provide the information sought by this interrogatory.

1
2 This interrogatory seeks information relevant to defining the class. It also seeks
3 information needed to rebut Ocwen's bona fide error defense. It asks whether Ocwen gave any
4 of the potential class members notice that it could not obtain a deficiency judgment against them.
5 Failure to provide that information is relevant in deciding whether Ocwen's procedures were
6 "reasonably adapted" to avoid deceiving or misleading debtors about their rights under § 580b.
7 It also bears on whether Ocwen's efforts to collect on loans covered by the statute were
8 intentional. If Ocwen notified debtors of the existence and application of § 580b, then an
9 inference may be drawn in Ocwen's favor. If it failed to provide that notice, then an inference
10 may be drawn against it. That inference is relevant to damages. (See above at p. 6.)

11 **a. Ocwen's objections based on undue burden should be rejected.**

12 Ocwen's primary objection to interrogatories 1 through 7 are based on its position that
13 determining which of the loans that it services are subject to § 580b would unduly burden it.
14 This objection should be rejected for three reasons. First, Ocwen acknowledges that it possesses
15 certain information needed to determine which of its loans are subject to § 580b. Second, a
16 company as well-resourced and technologically sophisticated as Ocwen is unlikely to be
17 burdened by answering these interrogatories. And third, Ocwen cannot rely on a burden created
18 by its own record-keeping system to defeat discovery.

19 **i. Ocwen maintains the information necessary to provide a**
20 **response to these interrogatories.**

21 Whether a loan is subject to § 580b depends on three things. For the statute to apply, the
22 loan must have been for (i) the purchase of (ii) the debtor's primary residence, which (iii) has
23 undergone foreclosure. Ocwen has this information. As part of the meet and confer process,
24 Ocwen represented as follows:

25 • **Purchase Money.** Ocwen asserts that it does not input into its database whether
26 a mortgage is for purchase money or refinance, but it does have Uniform Residential Loan
27 Applications (URLA) for some of the loans it services. (Brancart Dec., Exhibit 11.) The
28 URLAs reflect whether a loan is for purchase money of a primary residence. (See e.g. Brancart

1 Dec., Exhibit 13.)

2 • **Debtor's Primary Residence.** In addition to URLAs, Ocwen possesses
3 "information regarding the owner-occupancy status of properties." (Brancart Dec., Exhibit 11.)
4 Ocwen also keeps a property address and a borrower address in its files. (Brancart Dec., Exhibit
5 12.) A match between those two address is one indication that the property is owner-occupied.

6 • **Foreclosure of First Mortgage.** Ocwen sometimes services a debtor's first and
7 second mortgages. In these instances, Ocwen knows whether the security for the second
8 mortgage has been extinguished by a foreclosure on the first mortgage. But, where Ocwen
9 services a second mortgage only, it claims that it is "often unaware" of foreclosure on the first
10 mortgage, but did not say how often. (Brancart Dec., Exhibit 11.) For example, Ocwen was
11 aware of Ms. Herrera's foreclosure, even though it only serviced her second mortgage.
12 (Brancart Dec., Exhibit 12.)

13 Based on Ocwen's representations, Ms. Herrera acknowledges that Ocwen may not
14 possess complete information that answers each of her discovery request. But information that is
15 responsive to discovery, albeit imperfect or incomplete, is nonetheless discoverable, and Ms.
16 Herrera request that that information be provided.

17 **ii. Ocwen has produced no evidence to suggest that answering**
18 **these interrogatories would be a burden to it.**

19 During the meet and confer conference, Ocwen asserted that responding to Ms. Herrera's
20 discovery would be unduly burdensome. Two factor undercut that objection. First, Ocwen is a
21 wealth company. And second, Ocwen became a wealthy by developing and refining industry-
22 leading information technology systems that may enable it to generate the information sought
23 here.

24 Ocwen's servicing business generates hundreds of millions of dollars in yearly revenue,
25 has over one thousand employees, and enjoys an entire 30,000 square foot facility dedicated to
26
27
28

1 “document storage and imaging.”³ Its technological resources are similarly vast. Ocwen’s
 2 “servicing platform (i.e. its loan database technology) runs proprietary information technology,
 3 developed over a 20-year period at a cost of more than \$140,000,000.” (Brancart Dec., Exhibit
 4 14, p. 4) licenses that technology in the form of a suite of applications to other mortgage-industry
 5 companies. In 2009, there were 270 software developers working on these products.⁴ (Form
 6 10-K - Exh. 14, p. 4.) Ocwen licenses this technology to others in the mortgage industry. In
 7 2009 alone, Ocwen earned \$28,331,000 through the sale of its mortgage technology products.
 8 (Form 10-K - Exh. 14, p. 32.) It claims to be a recognized leader in providing information
 9 technology solutions to the mortgage industry. (Brancart Dec., Exhibit 15.) “Mortgage-related
 10 technology” is part of Ocwen’s core business (Brancart Dec., Exhibit 16) and one of its
 11 “competitive strengths.” (Form 10-K - Exh. 14, p. 4.) Its advertising for these products suggests
 12 that, far from being a burden, locating and manipulating the information Ms. Herrera seeks is
 13 Ocwen’s speciality. As early as 2005, Ocwen claimed that its data management processes
 14 enabled it to shave “days – if not weeks – off the traditional due diligence process” for mortgage
 15 backed securities investors by using “high-speed scanners” and its “document imaging
 16 capabilities” to do “loan-by-loan, mini-bulk, [and] bulk” jobs. (Brancart Dec., Exhibit 17.) In
 17 light of its size and technological sophistication, Ms. Herrera is skeptical that Ocwen can
 18 produce evidence that answering her discovery will unduly burden it.

20 ³ According to Ocwen Form 10-K - Brancart Dec., Exh. 14 [“Exh. 14”]: Ocwen is “one of
 21 the largest servicers of subprime residential mortgage loans.” (Form 10-K - Exh. 14, p. 6.) Its
 22 largest concentration of loans is in California, where services 38,008 loan, comprising 11% of its
 23 total inventory. (Id.) Its servicing division alone had revenues of \$272,725,000 in 2009,
 24 \$340,725,000 in 2008, and \$343,648,000 in 2007. (Form 10-K - Exh. 14, p. 32.) Ocwen
 25 Financial Corporation, the holding company of which defendant Ocwen Loan Servicing LLC is a
 26 wholly-owned subsidiary, has 1,894 employees, 86% of whom work in servicing. (Form 10-K -
 27 Exh. 14, p. 10.) The company has a 30,000 square foot facility dedicated to “document storage
 28 and imaging” for loan documents, such as URLAs. (Form 10-K - Exh. 14, p. 19.)

⁴ Ocwen spun-off a new company, Altisource, in August 2009. Altisource now appears
 to handle the development of Ocwen’s suite of mortgage related software applications, but
 continues to offer support and service to Ocwen, its largest customer. (Form 10-K - Exh. 14, pp.
 4, 9.)

1 **iii. Ocwen cannot claim undue burden based on its own record-**
 2 **keeping choices.**

3 Ocwen acknowledges that it has, in some form and to some extent, the three types of
 4 information necessary to determine which of the loans it services are subject to § 580b (and thus
 5 responsive to interrogatories 1 through 7). (Section II.B.1.a., above.) But Ocwen claims that that
 6 information is not readily available in its databases, and to retrieve that information would,
 7 therefore, be unduly burdensome.

8 Courts have consistently rejected this species of argument, holding that a litigant cannot
 9 avoid relevant discovery based on a claim of undue burden where the burden is a product of the
 10 manner or method in which that litigant decided to maintain its files. To allow a litigant with an
 11 unwieldy record-keeping system to claim undue burden as a result of that system would defeat
 12 the purpose of the discovery rules. *Kozlowski v. Sears, Roebuck & Co.* 73 F.R.D. 73, 76 (D.C.
 13 Mass 1976); accord *Baxter Travenol Laboratories, Inc. v. LeMay*, 93 F.R.D. 379, 383 (D.C.
 14 Ohio 1981)(“In cases involving similar discovery requests, courts have held that an unwieldy
 15 record-keeping system, which requires heavy expenditures in money and time to produce
 16 relevant records, is simply not an adequate excuse to frustrate discovery.”)’ *Baine v. General*
 17 *Motors Corp.*, 141 F.R.D. 328, 331 (M.D. Ala. 1991)(“Nor can the lack of an adequate filing
 18 system insulate a party from discovery.”); *Wagner v. Dryvit Sys. Inc.* 208 F.R.D. 610-11
 19 (D.Neb.2001)(“The fact that a corporation has an unwieldy record keeping system which
 20 requires it to incur heavy expenditures of time and effort to produce requested documents is an
 21 insufficient reason to prevent disclosure of otherwise discoverable information.”)

22 *Kozlowski v. Sears* illustrates the point. There, a customer bought pajamas from Sears
 23 and then sued the retailer after his purchase turned out to be flammable. The customer asked
 24 Sears to produce records of similar consumer complaints. *Sears.*, 73 F.R.D. at 73-76. Sears
 25 objected, claiming the request was unduly burdensome. Sears explained that it could not readily
 26 locate similar complaints because its files were organized alphabetically, by the name of the
 27 complainant. Sorting through those complaints to find the responsive information would be “the
 28 equivalent of an impossible task,” Sears argued. *Sears.*, 73 F.R.D. at 77-76. But the Court was

1 not persuaded:

2 The defendant may not excuse itself from compliance with Rule 34, Fed.R.Civ.P., by
 3 utilizing a system of record-keeping which conceals rather than discloses relevant
 4 records, or makes it unduly difficult to identify or locate them, thus rendering the
 5 production of the documents an excessively burdensome and costly expedition. To allow
 6 a defendant whose business generates massive records to frustrate discovery by creating
 7 an inadequate filing system, and then claiming undue burden, would defeat the purposes
 8 of the discovery rules.

9 *Sears*, 73 F.R.D. at 76. Here, Ocwen's objections are similar to *Sears*'. Ocwen, like *Sears*, has
 10 been asked for relevant information through discovery. And Ocwen, like *Sears*, asks to be
 11 excused from producing that information because its record-keeping system makes it difficult to
 12 locate. If *Sears*' decision to organize files alphabetically did not justify an undue burden
 13 objection, then Ocwen's failure to make its database capable of easily locating loans subject to §
 14 580b should not justify that same objection.

15 Finally, it is unclear what Ocwen, a company with 11% of its servicing portfolio (over
 16 38,000 loans) located in California and thus subject to § 580b, sought to gain by designing its
 17 database system in a manner that overlooked information in its possession that would help it
 18 comply with § 580b. (Brancart Dec., Exhibit 14.)

19 **b. Ocwen's privacy objections should be rejected.**

20 Ocwen's privacy objections to these interrogatories should be rejected on three grounds.

21 First, the parties have stipulated (doc. 48) and the Court has entered (doc. 49) the
 22 Northern District's standard protective order. That order balances the rights of the parties,
 23 protecting Ocwen and its customer's interests in privacy and Herrera's need for the information
 24 sought. Accounting for the protective order, the privacy interest that a potential class member
 25 has in her name, address, and loan information is outweighed by Ms. Herrera's need for that
 26 information to make her case. If further protection is needed, then Ms. Herrera is open to
 27 providing that protection.

28 Second, Ocwen's objection is based on its concern for its borrowers' privacy. But

1 potential class members, who may still be paying Ocwen under the mistaken impression that it
 2 could obtain deficiency judgments against them, might dispute Ocwen's assertion that they
 3 would put rather keep their names, contact, and loan information private than obtain damages.

4 Third, the information sought – name, contact, and loan information – is not particularly
 5 sensitive in the first place. Disclosure of name and contact information, and even social security
 6 numbers (which Ms. Herrera is not seeking), is not unusual in the class action context. *See e.g.*
 7 *Belaire-West Landscape, Inc. v. Superior Court*, 149 Cal.App.4th 554, 561-562 (Cal.App. 2 Dist.
 8 2007); *Khalilpour v. CELLCO Partnership*, 2010 WL 1267749, 3 (N.D.Cal.,2010).

9 **c. The form and format of the information sought.**

10 Ms. Herrera has lodged a proposed order concurrently with this motion. The proposed
 11 order, if adopted, will require Ocwen to respond to these interrogatories by producing an
 12 electronic spreadsheet. Since Ocwen appears to have this information in electronic form, it
 13 makes sense to keep it that way. Requiring Ocwen to transcribe or print-out the information
 14 would, in turn, force plaintiff's counsel to then re-enter it into some form of spreadsheet so that it
 15 could be analyzed. That would waste effort, and re-entering the data could lead to data-entry
 16 errors.

17 The spreadsheet would include each loan serviced by Ocwen that does belong to a
 18 potential class member and each loan serviced by Ocwen that may belong to a potential class
 19 member. In other words, Ocwen can only exclude a loan from the spreadsheet if it is sure that
 20 the loan does not belong to a potential class member. Plaintiff's counsel can then use public
 21 records to determine whether the "maybes" are, in fact, putative class members. (Brancart Dec.
 22 ¶¶ 5-6.) Ms. Herrera believes this method is more equitable than limiting the production to only
 23 those loans where Ocwen can be sure the loan belongs to a potential class member. Ocwen's
 24 database-design choices should not defeat the claims of potential class members.

25 **2. The witness-identification information sought by interrogatories 9**
 26 **and 10 is relevant and should be produced.**

27 Ms. Herrera asks Ocwen to identify those who created the company's § 580b compliance
 28 procedures (interrogatory 9) and to identify those persons with knowledge of the company's

1 affirmative defenses (interrogatory 10). Ocwen provided no information in response, objecting
2 on relevance and burden grounds.

3 **Interrogatory 9:** Please identify by name, job title, dates of employment, last known
4 address, and phone number all the people involved in creating each procedure you have
5 had in effect since June 25, 2008, in connection with California Code of Civil Procedure
§ 580b.

6 **Ocwen's Answer:** Ocwen objects to this interrogatory to the extent it seeks information
7 protected by the attorney-client privilege and/or attorney work product doctrine. Ocwen
8 further objects on the grounds that this interrogatory is overbroad and burdensome.
9 Ocwen further objects on the grounds that this interrogatory seeks information that is not
10 reasonably calculated to lead to the discovery of admissible evidence. In particular, the
11 requested information regarding individual personnel (including their addresses, phone
12 numbers, and other information) who were "involved" in creating various procedures at
13 Ocwen is overbroad, burdensome, and has no bearing on the merits of plaintiff's claims
14 or the issue of whether a class may be certified.

15 **Interrogatory 10:** Please identify by name, job title, dates of employment, last known
16 address, and phone number all the people with knowledge of facts supporting each of
17 your affirmative defenses.

18 **Ocwen's Answer:** Ocwen objects to this interrogatory to the extent it seeks information
19 protected by the attorney-client privilege and/or attorney work product doctrine. Ocwen
20 further objects to this interrogatory is overbroad and burdensome and not reasonably
21 calculated to lead to the discovery of admissible evidence, particularly in so far as it
22 requests detailed information regarding individual personnel (including their addresses,
23 phone numbers and other information). Subject to and without waiving the foregoing
24 General and Specific Objections, Ocwen states: Pursuant to Fed. R. Civ. P. 33(d),
25 Ocwen will produce documents sufficient to evidence each of its affirmative defenses.

26 These interrogatories ask Ocwen to identify witnesses who have knowledge of its § 580b
27 policies and its affirmative defenses, topics that are may overlap. Ocwen argues that, while these
28 topics are relevant, the identities of knowledgeable witnesses are not. This argument is contrary
to Rule 26(b)(1) of the Federal Rules of Civil Procedure. The rule explicitly allows discovery of
"the identity and location of persons who know of any discoverable matter." Accordingly,
Ocwen's relevance objection should be overruled.

Ocwen also objects that locating these persons would be unduly burdensome. This is
unlikely. As discussed above, it seems improbable that identifying witnesses, most of whom are
probably its employees, could burden a company as well-resourced as Ocwen.

Finally, Ocwen objects to these interrogatories as overbroad. Not so. Each person who
was involved in creating Ocwen's § 580b may have unique knowledge that bears on Ocwen's

1 bona fide error defense (i.e. whether its policies are “reasonably adapted” for compliance).
 2 Likewise, the identity of each person with knowledge of Ocwen’s affirmative defenses is within
 3 the scope of discovery, each person may lead Ms. Herrera to the discovery of admissible
 4 evidence.

5 Throughout the meet and confer conference and in their response to interrogatory 10,
 6 Ocwen has taken the position that Ms. Herrera will get all the information she needs from the
 7 documents Ocwen chooses to produce in support of its affirmative defenses and its Rule 30(b)(6)
 8 corporate representatives. But no litigant is required to trust their opponent, and discovery is not
 9 limited to what the other party wants to disclose. Nor is it a burden to be asked to produce more
 10 than one’s case-in-chief. Ms. Herrera has a right to test Ocwen’s defenses and to depose
 11 witnesses with relevant knowledge under Rules 30 and 45 of the Federal Rules of Civil
 12 procedure. Ocwen’s objections to the contrary should be overruled.

13 **3. The Ocwen-LCS documents are relevant and should be produced.**

14 Request 5 asks Ocwen for documents related to Ms. Herrera or her loan that passed
 15 between it and co-defendant LCS. Request 6 asks for any agreements between LCS and Ocwen.
 16 Ocwen objected that neither category of documents is relevant. During the meet and confer
 17 process, Ocwen’s counsel said it would “inquire” into what “fields of data would have been
 18 transmitted from Ocwen to LCS” in connection with Ms. Herrera’s loan but has not agreed to
 19 produce this information. (Brancart Dec., Exhibit 11.)

20 **Request 5:** All documents and ESI exchanged between you and defendant LCS that
 21 relate to Mercedes Herrera, including those that relate to her foreclosure, her loan, the
 assignment of her loan by you to LCS, and to this lawsuit.

22 **Ocwen’s Response:** Ocwen objects to this request on the grounds that it is overbroad.
 23 Ocwen further objects on the grounds that this request is not reasonably calculated to lead
 24 to the discovery of admissible evidence, particularly in so far as this lawsuit concerns the
 content of communications between Ocwen and the plaintiff (or between LCS and the
 plaintiff), not communications between Ocwen and LCS themselves.

25 **Request 6:** A copy of all contracts in effect between you and defendant LCS from the
 26 time Mercedes Herrera's loan was assigned by you to LCS to the time this lawsuit was
 filed.

27 **Ocwen’s Response:** Ocwen objects on the grounds that this request is overbroad and not
 28 reasonably calculated to lead to the discovery of admissible evidence, particularly in so
 far as this lawsuit concerns the content of communications between Ocwen and the

1 plaintiff (or between LCS and the plaintiff), not the relationship between Ocwen and
 2 LCS. As such, the requested documents have no bearing on the subject matter of this
 litigation.

3 **a. Ocwen's relevance objection is premised on Ocwen's liability**
 4 **being the only issue in this case, which it is not.**

5 Ocwen believes that these documents are irrelevant because the issues in this case "turn[]"
 6 on the content of communication between plaintiffs and defendants. They do not turn upon
 7 communications between defendants." (Brancart Dec., Exhibit 7.) "[P]laintiff's claims depend
 8 upon whether the content in defendant's communications to plaintiff is false, deceptive, or
 9 misleading within the meaning of the Rosenthal FDCPA or the federal FDCPA." (Id.) But
 10 that's just Ocwen's liability, which is not the only issue in the case. Other factors will determine
 11 Ms. Herrera's statutory damages, co-defendant LCS's liability, and both defendants' bona fide
 12 error defenses. The requested documents could be, or could lead to, admissible evidence on any
 13 or all of those issues. The documents related to Ms. Herrera and sent between Ocwen and LCS
 14 may, for example, include the information either would have needed to know that Ms. Herrera's
 15 loan was subject to § 580b. If LCS received, and then ignored, this information, it could show
 16 that its procedures are not "reasonably adapted" to compliance with § 580b. It is also possible
 17 that a contract or agreement between LCS and Ocwen might contain provisions with respect to §
 18 580b loans.

19 **b. Ocwen's remaining objection, if valid, does not excuse**
 20 **compliance.**

21 Ocwen has also called these requests overbroad. But this objection does not bar
 22 production. Answering parties cannot rest on a breadth objection, but must respond to the extent
 23 not objectionable. In other words, Ocwen must, at least, respond to the extent the request calls
 24 for relevant documents.

25 **4. The § 580b-Correspondence and Related Documents sought by**
 26 **requests 13 and 14 should be produced.**

27 This discovery seeks communications about § 580b and related documents sent to Ocwen
 28 by borrowers (request 13) and anyone else (request 14). Ocwen objected to both requests on

1 relevance grounds. It also objected to the borrower-request because it was not limited to the
 2 class period. At the close of the meet and confer process Ocwen produced a handful of
 3 responsive, but heavily redacted, letters. (Brancart Dec., Exhibit 18.) Ocwen said that these
 4 letters were what it could find after a "reasonable" search. (Brancart Dec., Exhibit 11.)

5 **Request 13:** All documents and ESI that reflect borrowers contacting you regarding
 6 California Code of Civil Procedure § 580b since June 25, 2008, including the
 communications themselves.

7 **Ocwen's Response:** Ocwen objects to this interrogatory (sic) to the extent it seeks
 8 information protected by the attorney-client privilege and/or attorney work product
 9 doctrine. Ocwen further objects to this request to the extent it is not reasonably
 10 calculated to lead to the discovery of admissible evidence, particularly in so far as other
 11 borrowers' communications with Ocwen, if any, regarding the statute, have no bearing on
 12 plaintiff's claims. Ocwen further objects to this request to the extent it is overbroad by
 13 failing to limit the "borrowers" described in the letter (sic) to members of plaintiff's
 proposed putative class. Ocwen further objects to the request on the grounds that it is
 burdensome; Ocwen cannot search communications from individual borrowers without
 doing a loan-by-loan file review, and certainly cannot undertake such a review with
 respect to the literally hundreds of thousands of loans it services, particularly in light of
 the lack of relevance the requested communications have to plaintiff's claim.

14 **Ocwen's Supplemental Response:** Ocwen Objects to this interrogatory (sic) to the
 15 extent it seeks information protected by the attorney-client privilege and/or attorney work
 16 product doctrine. Ocwen further objects to this request to the extent it is not reasonably
 17 calculated to lead to the discovery of admissible evidence, particularly in so far as other
 18 borrowers' communications with Ocwen, if any, regarding the statute, have no bearing on
 19 plaintiffs' claims. Ocwen further objects to this request to the extent it is overbroad by
 20 failing to limit the "borrowers" described in the request to members of the plaintiff's
 21 proposed putative class. Ocwen further objects to the request on the grounds that it is
 burdensome; Ocwen cannot search communications from individual borrowers without
 doing a loan-by-loan file review, and certainly cannot undertake such a review with
 respect to the literally hundreds of thousands of loans it services, particularly in light of
 the lack of relevance the requested communications have to plaintiff's claims.
 Subject to and without waiving the foregoing objections, Ocwen will produce documents
 that reflect borrowers contacting Ocwen regarding California Code of Civil Procedure
 Section 580b since June 25, 2008 that Ocwen is able to locate through a reasonable
 search.

22 **Request 14:** All documents and ESI that reflect persons or entities other than borrowers
 23 contacting you regarding California Code of Civil Procedure § 580b since June 25, 2008,
 24 including the communications themselves.

25 **Ocwen's Response.** Ocwen objects to this interrogatory (sic) to the extent it seeks
 26 information protected by the attorney-client privilege and/or attorney work product
 27 doctrine. Ocwen objects to this interrogatory (sic) on the grounds that it seeks
 information not reasonably calculated to lead to the discovery of admissible evidence and
 has no relevance to the claim or defense of any party, nor the subject matter of this
 litigation.

28 **Ocwen's Supplemental Response:** Ocwen objects to this interrogatory (sic) to the

1 extent it seeks information protected by the attorney-client privilege and/or attorney work
 2 product doctrine. Ocwen objects to this interrogatory (sic) on the grounds that it seeks
 3 information not reasonably calculated to lead to the discovery of admissible evidence and
 has no relevance to the claim or defense of any party, nor the subject matter of this
 litigation.

4 Subject to and without waiving the foregoing objections, Ocwen will produce documents
 5 that reflect entities other than borrowers contacting Ocwen regarding California Code of
 6 Civil Procedure Section 580b since June 25, 2008 that Ocwen is able to locate through a
 reasonable search.

7 **a. All the requested communications are relevant, not just those**
 8 **that borrowers sent in after the class period began.**

9 Ocwen argues that *only* communications sent by borrowers during the class period are
 10 relevant. Not so. All the requested documents are relevant, and Ocwen's time-limitation is
 11 improper.

12 Those that come from potential class members are relevant to class certification, at least.
 13 Those that come from third parties, like attorneys or public interest groups (like Ms. Herrera's
 14 counsel, Housing and Economic Rights Advocates) are relevant because they allow Ms. Herrera
 15 to follow-up on that communication by identifying and interviewing witnesses and requesting
 16 further documents from Ocwen to determine how it reacted. This information could speak to
 17 damages or Ocwen's bona fide error defense.

18 Ocwen's temporal limitation is also improper. It might make sense if the letters were
 19 only useful for counting class members, but one factor that informs the determination of
 20 statutory damages is the frequency of the defendants' violations. Since violations from prior to
 21 Ms. Herrera's class period count, older letters are relevant.

22 **b. Ocwen's burden objection would "defeat the purpose of the**
 23 **discovery rules."**

24 Both Ms. Herrera and the plaintiff in *Sears* requested prior complaints. Neither Ocwen
 25 nor *Sears* denied having responsive documents, but objected on burden grounds because their
 26 own filing systems were designed in ways that "conceal[] rather than disclose[] relevant records,
 27 or make[] it unduly difficult to identify or locate them, thus rendering the production of the
 28 documents an excessively burdensome and costly expedition." *Sears*, 73 F.R.D. at 75-76. *Sears*

1 created the burden it sought to rely on by organizing complaints by the last name of the
2 complainant. Ocwen does so by, apparently, failing to make any searchable index of the
3 documents at all. That failure should not be excused for a company as sophisticated as Ocwen.

4 **c. Ocwen should not be allowed to rest on its “reasonable**
5 **search.”**

6 The letters Ocwen produced following its “reasonable search” are not enough. Ms.
7 Herrera maintains that she is entitled to all responsive communications. As argued above,
8 Ocwen cannot rely on a burden of its own making to defeat *or limit* the discovery of relevant
9 documents. The *Sears* court required the retailer to perform a “file by file” review to locate
10 responsive documents. This Court should do the same.

11 **d. Ocwen’s redactions are improper.**

12 As set forth in Exhibit 18, Ocwen redacted all identifying information from the letters it
13 produced. It even redacted the contact information from a letter written by an attorney. Ms.
14 Herrera is entitled to that information. The individuals who wrote those letters are potential
15 class members and witnesses. These document are, of course, subject to the protective order
16 already in place.

17 **D. CONCLUSION**

18 Ms. Herrera asks the Court to grant her motion and enter the proposed order lodged with
19 this motion.

20 Dated: June 26, 2010.

21 Respectfully Submitted

22 BRANCART & BRANCART

23 /s/ Christopher Brancart

24

Christopher Brancart
25 Attorneys for plaintiff
26
27
28

CERTIFICATE OF SERVICE

On June 26, 2010, I served a true and correct copy of the following attached document:

PLAINTIFFS' NOTICE OF MOTION AND MOTION TO COMPEL FURTHER DISCOVERY
RESPONSES BY DEFENDANT OCWEN LOAN SERVICING, LLC; DECLARATION OF
CHRISTOPHER BRANCART; EXHIBITS

upon the following person(s):

Ms. Elizabeth Lemond McKeen O'Melveny & Myers, LLC 610 Newport Center Drive, 17 th Floor Newport Beach, CA 92660 fax: 949-823-6994 emckeen@omm.com	Mr. Mark E. Ellis Ms. Kimberly E. Lewellen Ellis, Coleman, Poirier, LaVoie & Steinheimer, LLP 555 University Avenue, Suite 200 East Sacramento, CA 95825 fax: 916-283-8821 mellis@ecplslaw.com klewellen@ecplslaw.com
Mr. William E. Kennedy Law Offices of William E. Kennedy 2797 Park Avenue, Suite 201 Santa Clara, CA 95050 fax: 408-241-1500 willkennedy@pacbell.net	Mr. Noah Zinner Housing and Economic Rights Advocates PO Box 29435 Oakland, CA 94604 fax: 510-868-4521 nzinner@heraca.org

in the following manner(s):

xx	BY ELECTRONIC TRANSMISSION OF THE "NOTICE OF ELECTRONIC FILING:" By electronically filing the document(s) (Certain counsel are "Filing Users," as indicated above).
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Executed on June 26, 2010, at Loma Mar, California

/s/ Christopher Brancart